

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

JAMES MORRISON,

Plaintiff,

:

Case No. 3:09-cv-9

-vs-

District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

:

OFFICER MARTIN K. GREENWALD,
et al.,

Defendants.

REPORT AND RECOMMENDATIONS

This case is before the Court on Defendants' Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction (Doc. No. 8). Faced with this Motion, Plaintiff, who is proceeding *pro se*, sought and obtained leave to supplement his Complaint to allege deprivation of federal constitutional rights by Defendants while they were acting under color of state law. As thus supplemented, the Complaint states a claim for relief under 42 U.S.C. § 1983 over which this Court has subject matter jurisdiction by virtue of 28 U.S.C. § 1343, as well as the general federal question statute, 42 U.S.C. § 1331.

The Motion to Dismiss should therefore be denied.

March 30, 2009.

s/ **Michael R. Merz**
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within ten days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(e), this period is automatically extended to thirteen days (excluding intervening Saturdays, Sundays, and legal holidays) because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(B), (C), or (D) and may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within ten days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F. 2d 947 (6th Cir., 1981); *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985).